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SUBJECT: NAMIBIA: INCSDR PART II, MONEY LAUNDERING AND FINANCIAL CRIMES

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NAMIBIA
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¶11. (SBU) Although Namibia has one of the most highly developed financial systems in Africa, it is not considered a regional financial center. In addition to the Bank of Namibia (the central bank), Namibia has four commercial banks.

¶12. (SBU) The major sources of potential money laundering in Namibia are related to both regional and domestic criminal activities. The regional activities include falsification or misuse of identity documents, customs violations, trafficking in illegal drugs, and stolen vehicles, mostly from South Africa. Organized crime groups involved in smuggling activities generally use Namibia as a transit point -particularly for goods destined for Angola. Namibia does not appear to have a significant informal domestic market for smuggled goods. Domestically, real estate as well as minerals and gems are reportedly used as a vehicle for money laundering. Namibian authorities believe that the proceeds of these activities are laundered through Namibian financial institutions, but such money laundering takes place on a small scale.

¶13. (SBU) Financial institutions are generally quick to react when they suspect money laundering. There is little evidence of significant laundering/terrorist financing within the banking system, within an offshore financial center or free trade zone, or in the non-bank financial system (e.g. exchange houses) or via alternative remittance systems, such as hawala, hundi, or other systems. There is also little evidence to suggest that financial institutions engage in currency transactions involving international narcotics trafficking proceeds that include significant amounts of U.S. currency or currency derived from illegal drug sales in the United States or that otherwise significantly affect the United States. There are indications but no hard evidence that trade-based money laundering occurs.

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OFFSHORE FINANCIAL CENTERS
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¶14. (SBU) Namibia is not considered an offshore financial center. Since it has no offshore sector the government has no separate agency to regulate offshore activities - such as the licensing of offshore banks and businesses. While gambling and casinos are legal within Namibia, offshore casinos are prohibited under Namibian law. There is one internet gaming site, although online gaming sites are not regulated under Namibian law.

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FREE TRADE ZONES
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¶15. (SBU) The Namibian government has set up Export Processing Zones (EPZ) which act in many ways as free trade zones, but there are differences. The Ministry of Trade and Industry's Offshore Development Company (ODC) is responsible for the monitoring,

regulation and promotion of EPZs. According to ODC, "Namibia's EPZ regime is unique in that it is not location-bound. EPZ registered companies are free to locate themselves anywhere in the country and are not restricted to specific geographical zones. Specially designated industrial zones and parks have been established at Walvis Bay, Oshikango and Katima Mulilo." According to the Ministry of Trade and Industry, "EPZ enterprises operate outside the normal foreign exchange regime in Namibia. . . .[via]" two types of banking accounts [that] have been tailor-made to the needs of enterprises operating in the Namibia EPZ." There is no indication that EPZs are being used in trade-based money laundering schemes or by the financiers of terrorism.

LEGAL FOUNDATION OF AML REGIME

¶16. (SBU) In 2004, Namibia criminalized money laundering with the passage of the Prevention of Organized Crime Act (POCA). Money laundering under POCA applies to all serious crimes and not just drug trafficking. In July 2007 the Financial Intelligence Act (FIA) was passed. The FIA will serve as the cornerstone in Namibia's anti-money laundering and counter terrorist financing (AML/CTF) regime in concert with the POCA and the 2003 Anti-Corruption Act, as well as the Drug Control Bill and the Anti-Terrorism Bill, both of which still need to be enacted. All these acts will need to be harmonized, especially the POCA and the FIA which overlap considerably, including the definition of money laundering and requiring the reporting of suspicious transactions. Implementation of POCA has been delayed in order to pass amendments to the act to harmonize it with FIA. POCA will be implemented once the recently proposed amendments to it are enacted and its regulations are issued.

¶17. (SBU) Besides suspicious transaction reporting, the FIA has additional reporting requirements, such as large cash transactions, electronic funds transfers, and cross-border conveyances of currency; and it strengthens the Government's ability to investigate and prosecute money laundering crimes. The 2003 Anti-Corruption Act provides for the establishment of an Anti-Corruption Commission. The Anti-Corruption Commission was inaugurated in 2006. The Commission appoints investigators, who have full and wide powers to investigate allegations of corruption.

¶18. (SBU) Namibia has financial secrecy laws. But such laws do not prevent disclosure of client and ownership information to bank supervisors and law enforcement authorities.

FINANCIAL SECTOR

¶19. (SBU) The Bank of Namibia (BoN) supervises and examines the four commercial banks operating in Namibia. The Namibian Financial Institutions Supervisory Authority (NAMFISA) supervises and examines non-banking financial institutions, such as securities firms and insurance companies. The BoN has established the Financial Intelligence Centre (FIC) to carry out the Bank's AML duties and responsibilities. The FIC is located within the BoN. The BoN has appointed the FIC's Director, and the FIC appears to be adequately staffed with two deputy directors and five analysts. It has some operational and budgetary independence, but the BoN should grant the FIC more independence through a delegation order. The FIC receives its budget from the BoN.

¶110. (SBU) Once in effect FIA will require both bank and non-bank financial institutions to identify customers and to report suspicious transactions to the Central Bank and provide relevant documents and other information to government authorities for use in criminal investigations. FIA also requires such institutions to report transactions above threshold limits, namely cash transactions, electronic funds transfers, and cross border conveyances of cash. The threshold limits are under study and have not yet been established by regulation. There is no threshold amount for suspicious transactions.

¶111. (SBU) Once FIA is implemented, banks and other financial

institutions will be required to maintain records for five years. This is intended to allow FIC to reconstruct significant transactions through financial institutions in order to be able to respond quickly to information requests from appropriate government authorities in narcotics-related or other money laundering or terrorist finance cases.

¶12. (SBU) Under FIA, AML/CTF controls will be applied to non-bank financial institutions (NBFIs) and designated non-financial businesses and professions (DNFBPs), such as exchange houses, stock brokerages, cash couriers, casinos, dealers in jewels and precious metals, insurance companies, pawn shops, realtors, high-worth dealers in art and vehicles, and to intermediaries, such as lawyers, accountants, notaries, or broker/dealers.

¶13. (SBU) Reporting individuals (bankers and others) are protected by law with respect to their cooperation with law enforcement entities.

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FINANCIAL INTELLIGENCE UNIT (FIU)/INVESTIGATIONS
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¶14. (SBU) The FIC is the administrative body that has regulatory and analytic (but not investigative) duties and responsibilities under the FIA. Under FIA, the FIC will have access to government and financial institution records and databases. The FIC has not yet formally entered into MOUs or other mechanisms for domestic and international information sharing, but it has authority to do so under the FIA.

¶15. (SBU) Since the FIA is not yet in effect, no suspicious transaction reports (STRs) were received in 2008 under the new formal AML regime. However, over the years, a handful of STRs have routinely been received by the Bank under directives and the like exercised under its supervisory powers.

¶16. (SBU) The Commercial Crime Unit of the Namibian Police (NAMPOL) and the Office of the Prosecutor General are responsible for formally investigating financial crimes. The Office of the Prosecutor General appears to be adequately staffed and fairly well trained, but NAMPOL, while somewhat adequately staffed is generally regarded as being poorly equipped and trained.

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ASSET FORFEITURE AND SEIZURE LEGISLATION
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¶17. (SBU) There have never been any arrests or prosecutions for money laundering. Money laundering was not a criminal offense under Namibian law until POCA, and POCA is not yet fully implemented.

¶18. (SBU) Namibia is still waiting to implement its laws (POCA and FIA) that criminalize money laundering or the financing of terrorism. Once POCA is in effect money laundering will be an offense, and forfeiture will be a mechanism for responding to a laundering infraction. POCA provides for both civil and criminal forfeiture. Amendments to POCA appear to have cleared most hurdles in Parliament and are expected to be signed into law soon, thereby clearing the way to place POCA itself into effect.

¶19. (SBU) Under POCA, the Government will be able to seize assets and intangible property such as bank accounts, including the instrumentalities and proceeds of crime, as well as substitute assets. Namibia does not yet have a law similar to the RICO Act under U.S. law that would permit the seizure of a legitimate business if used to launder money or support terrorist activity. The major provisions in POCA regarding asset forfeiture and seizure are:

- Asset confiscation or asset forfeiture.
- Restraint Orders -- A High Court order which restrains persons from dealing with the property which is the subject of the order.
- A Criminal Assets Recovery Fund into which the proceeds of confiscated assets and certain other funds are to be deposited.

- Search/investigative powers which are useful for obtaining property information from third party custodians of information (such as banks or other financial institutions).

¶20. (SBU) The Office of the Prosecutor General and NAMPOL are responsible for the tracing, seizing, and freezing of assets. It is expected that the banking community will fully cooperate with enforcement efforts to trace funds and seize/freeze bank accounts once POCA is in effect.

¶21. (SBU) Namibia has not yet enacted any laws for the sharing of seized assets with other governments, but apparently could do so pursuant to an international agreement or treaty. Namibia is not currently engaged in any bilateral multilateral negotiations with other governments to enhance asset tracing, freezing, and forfeiture. However, Namibia did participate in the negotiations regarding the UN Convention against Transnational Organized Crime, and signed and ratified the resulting Convention which deals extensively with seizure and forfeiture.

TERRORIST FINANCING

¶22. (SBU) There have been no known arrests or prosecutions for terrorist financing. An Anti-Terrorism Bill has passed the legal drafting stage, but has still not been tabled in Parliament. Under the proposed counterterrorism law, the Government would be empowered to proscribe an organization if it commits or participates in terrorism; prepares for acts of terrorism; promotes or encourages terrorism; or is otherwise involved with terrorism. The proposed law would also prohibit individuals from providing money or other property with the intention or knowledge (or suspicion) that such money or other property would be used for the purposes of terrorism (regardless whether or not a terrorism act was committed). Until the Anti-Terrorism Bill is enacted, there will be no system for freezing terrorist assets.

¶23. (SBU) Namibia is a member of the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG). Namibia served as the Chair of ESAAMLG from August 2001 until August 2002. Namibia is a party to the UN Convention against Transnational Organized Crime. In November 2001, the GRN signed the UN International Convention for the Suppression of the Financing of Terrorism, and is making progress toward becoming a party. An Anti-Terrorism Bill is still in the drafting process and is not yet under consideration by Parliament. Until such a bill is passed, terrorist financing would not be considered a serious crime and a predicate offense for money laundering.

¶24. (SBU) The BoN routinely circulates to its financial institutions the list of individuals and entities that have been included on the UN 1267 sanctions committee's consolidated list as being linked to Usama bin Laden, members of the Al Qa'ida organization, and the Taliban. The BoN also circulates the list of terrorist organizations/financiers that the United States and the European Union (EU) have designated under relevant authorities.

¶25. (SBU) There is no evidence that indicates that value transfer systems are used in Namibia in lieu of the formal financial system. Namibia has not yet taken measures to thwart the possible misuse of charitable and/or non-profit entities that can be used as conduits

for the financing of terrorism. There is no government entity that regulates or supervises such sectors.

CROSS-BORDER TRANSPORTATION OF CURRENCY
AND NEGOTIABLE INSTRUMENTS

¶26. (SBU) The FIA has provisions for monitoring the cross-border transportation of currency and monetary instruments, namely, threshold reporting requirements for cross-border conveyances of cash. Once FIA is in effect the FIC will require (after a phase-in process) that Customs forward such reports to it for entry into FIC data bases.

INTERNATIONAL COOPERATION

¶127. (SBU) Namibia is a party to the UN Convention against Transnational Organized Crime (Palermo Convention). In November 2001, the GRN signed the UN International Convention for the Suppression of the Financing of Terrorism, but it has not yet ratified the Convention.

¶128. (SBU) Namibian law only permits the exchange of records with the United States on investigations and proceedings related to narcotics, all-source money laundering, terrorism and terrorist financing if there is a bilateral or multilateral treaty in place specifically providing for such cooperation. Unfortunately, Namibian courts have ruled that the Palermo Convention does not trigger such law and thus the provisions of the Palermo Convention are not "self-executing" under Namibian law. Namibia has not reached any bilateral agreement with the United States authorities on a mechanism for exchange of records in connection with such investigations and proceedings. Furthermore, there are no current negotiations between Namibia and the United States to establish such an exchange mechanism. Namibia does have such cooperative agreements with countries in the SADC Region.

¶129. (SBU) Namibia is not yet a member of the Egmont group. It has not yet entered into any agreements with other FIUs because the FIA is not yet in effect. The FIC is developing MOUs with other supervisory authorities to facilitate the exchange of supervisory information regarding banking and non-banking financial institutions in Namibia.

¶130. (SBU) Namibia has made substantial efforts to cooperate with the United States and other countries in the area of law enforcement, especially in the area of extradition. There is no evidence that suggests the Namibian government has deliberately refused to cooperate with foreign governments.

¶131. (SBU) Namibia is attempting to adhere to all established relevant international money laundering standards, such as the recommendations of the FATF and the Basel Group by establishing the FIC and enacting the FIA and POCA.

MATHIEU